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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY  DEPUTY

NO. 46823-9-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

COLLEGE MARKETPLACE LLP,
a Washington Limited Liability Company,

Appellant.

v.

OLHAVA ASSOCIATES, LP, a Washington Limited Partnership,
HD DEVELOPMENT OF MARYLAND, INC., a Maryland Corporation,
and WAL-MART REAL ESTATE BUSINESS TRUST,
a Delaware Statutory Trust,

Respondents.

RESPONDENT WAL-MART REAL ESTATE BUSINESS TRUST'S
BRIEF

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I. INTRODUCTION

Respondent Wal-Mart Real Estate Business Trust (“Wal-Mart”), pursuant to RAP 10.1(g)(2), joins in and incorporates by reference Respondent HD Development of Maryland, Inc.’s (“Home Depot’s”) Brief in its entirety as Wal-Mart’s response to the issues and arguments raised in Appellant College Marketplace, LLC’s (“College’s”) Opening Brief. In addition, as more fully set forth below, Wal-Mart submits that the trial court properly awarded Wal-Mart its attorneys’ fees and respectfully requests that this Court affirm the Judgment in favor of Wal-Mart.

II. STATEMENT OF THE CASE

Wal-Mart joins in and incorporates by reference the statements of fact set forth in Home Depot’s Brief in Section III, Statement of the Case, at pages 5-13. In addition, Wal-Mart submits the following additional facts:

Following the trial court’s dismissal of College’s equitable claims, Wal-Mart moved to recover its attorneys’ fees pursuant to Section 13 of the Easements with Covenants and Restrictions (“ECRs”) (CP 1282-83). That motion was granted on November 26, 2014, and the trial court issued additional Findings of Fact and Conclusions of Law on February 20, 2015 (CP 1486-1503, 1508-26).

III. ARGUMENT

Wal-Mart joins in and incorporates by reference the arguments set forth in Home Depot's Brief in Section IV, Argument, at pages 13-47. In addition, Wal-Mart submits the following additional argument regarding its entitlement to attorneys' fees.

A. **The Amount of the Fees Awarded to Wal-Mart Was Not an Abuse of the Trial Court's Discretion.**

In this case, the trial court awarded Wal-Mart attorneys' fees and costs in the amount of \$99,351.99. (CP 1531-33). Other than a bare allegation in its Opening Brief that the total amount of the attorneys' fees awarded to respondents "is grossly excessive on its face," College fails to present any argument or evidence challenging the reasonableness of the fees and costs awarded to Wal-Mart. *See* Appellant's Brief at 41-42. Nor does College even challenge the trial court's findings of fact supporting the fee award to Wal-Mart, findings that are based on detailed documentation provided by Wal-Mart. (CP 1284-1443).

The trial court's determination of the amount of reasonable attorneys' fees is reviewed for abuse of discretion. *See, e.g., Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987). ("The amount of a fee award is discretionary, and will be overturned only for manifest abuse."). In this case, College has failed to argue let alone demonstrate

that the trial court abused its discretion in the amount of attorneys' fees awarded to Wal-Mart. The Court should affirm the award of attorneys' fees and costs to Wal-Mart.

B. Wal-Mart Should Be Awarded Its Costs and Fees on Appeal.

Wal-Mart requests that it be awarded its attorney's fees and costs on appeal.

IV. CONCLUSION

Wal-Mart respectfully requests that the Judgment in its favor be affirmed in its entirety and that Wal-Mart be awarded its costs and fees on appeal.

RESPECTFULLY SUBMITTED this 29th day of June, 2015.

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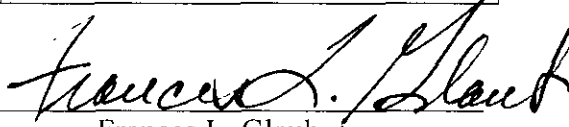
CERTIFICATE OF SERVICE

I certify, under penalty of perjury under the laws of the State of Washington, that on June 29, 2015, I served a copy of the foregoing document on all counsel of record as indicated below:

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